IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10675 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDUL MAJID AHMAD PATEL
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for the petitioner
Mr ND Gohil, AGP for Respondents Nos.1 to 3
Mr M.IQBAL A SHAIKH for Respondent No.4

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies

of Essential Commodities Act, 1980 ("PBM Act" for short), has challenged his detention order dated 23.03.2006 on various grounds. By the aforesaid order, the petitioner is detained under provisions of the PBM Act. With the detention order, the petitioner is also served with the ground of detention. In the grounds of detention, it is alleged that the petitioner is engaged in black marketing activity in the matter of distribution of kerosene. That even though the licence for authorisation is given to the petitioner for distributing kerosene to cardholders, the petitioner has tried to divert large quantity of kerosene at other places. The authority, after considering the various material produced on record has ultimately detained the petitioner under the said provisions of PBM Act as the authority was of the opinion that in order to prevent the petitioner from his black marketing activity, it is necessary to detain him under the provisions of the PBM Act. The detaining authority after being subjectively satisfied, detained the petitioner by passing detention order under Sub-section (2) of Section (3) of the PBM Act.

Mr Prajapati, learned advocate for the petitioner submitted that without any basis or material the authority has passed order or it cannot be said that the subjective satisfaction arrived at by the authority is vitiated. Learned counsel for the petitioner, however, submitted that the petitioner-detenu made a representation to the authority on 15.04.2006 but the said representation is not dealt with by the State or Central Government. In this connection, the affidavit-in-reply is filed by one Shri A.K. Ganguly, Under Secretary, Department of Food and Public Distribution, New Delhi. The said officer has stated in paragraph 5 of his reply as under:-

> "5. As regards cotnention made in sub-paras (i) of para 4 of the petition, it is submitted that the representation dated

15.4.2006 stated to be made on behalf of the detenu was not received in the concerned Section in the Department of Consumer Affairs of the Union Government."

Mr Prajapati submitted that the representation which was sent by the detenu was required to be dealt with promptly. On behalf of the State Government, affidavit-in-reply was filed by the District Magistrate, Bharuch in his paragraph 11 has dealt with the said aspect.

"11. With respect to the averments made in grounds h and i the same are denied. The petitioner made representation dated 15.04.2006. The said representation was forwarded to the Government along with remarks on 18.05.2006. Therefore, the order of detention is not required to be quashed."

It is required to be noted that the representation dated 15.04.2006, which was received by the office of the District Magistrate was forwarded to the State Government after a period of one month and eight days i.e. on 8.5.2006. It is required to be noted that as per the averments made in the reply that the said representation remained unattended for more than one month. No explanation was given as to why the same was not despatched at the earliest. The State Government has not filed any reply as to when they have received such representation. It is a matter of regret that the poitn of delay raised in the petition has been dealt with in an absolutely unsatisfactory manner by the District Magistrate and the State Government has not even cared to file reply in a matter in which the detenu is involved in a serious offence of diversion of kerosene which was meant for cardholders. Mr Prajapati submitted that on this ground, the order of detention passed against the petitioner is required to be quashed. In support of his say, Mr

Prajapati has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another,** reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.
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> 10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

It is not in dispute that the Central Government has not received the representation of the petitioner. The State Goivernment has not filed any reply stating whether it has received any such representation which is said to have been sent by the detenu. Since the representation of the petitioner is not decided at all, the constitutional safeguards have been violated by the State Government. Under these circumstances, on the aforesaid ground of not deciding the representation at all by the State

Government, this petition is required to be allowed. It is hoped that in future proper and due care will be taken by the concerned Department while sending the representation especially when as per the settled legal position the representation of the detenu is required to be attended to without unreasonable delay or if there is a delay, such delay should be explained satisfacotrily. Both the aforesaid aspects have not been taken care at all by the State Government. Therefore, this petition is required to be allowed and the order of detention is required to be quashed.

Considering the aforesaid aspect of the matter, this petition is allowed. The impugned order of detention dated 23.03.2006 passed by the District Magistrate, Bharuch is set aside. The detenu – Abdul Majid Ahmad Patel is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

(P.B.MAJMUDAR, J.)

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